

Message Text

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ACTION EUR-25

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TO USMISSION BERLIN IMMEDIATE

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C O N F I D E N T I A L BONN 03526

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: INGRID BRUECKMANN CASE

REF: BERLIN 378

1. US, UK AND FRENCH REPS AT MARCH 5 TRIPARTITE MEETING
REVIEWED 3-STEP RECOMMENDATIONS OF BERLIN MISSIONS
SUMMARIZED PARA 2 REFTEL. AGREEMENT REACHED THAT ALLIES
SHOULD PROCEED IN ACCORDANCE STEPS (B) AND (C) AND THAT
USBER QUITE RIGHT IN JUDGEMENT THAT ACTION NEEDED BEFORE
END OF THIS WEEK. ALLIED REPS
AGREED THAT BERLIN MISSIONS SHOULD PROCEED WITH
DRAFTING OF BK/L ALONG LINES PARA 2(C) REFTEL REFERENCING
ALSO BK/O (52)35. AS FOLLOW-UP, EMBASSIES WOULD THEN
USE BK/L AS OPERATIVE LANGUAGE OF AIDE-MEMOIRE TO FRG
FONOFF AS PROPOSED PARA 2(B) REFTEL. ALL AGREED THAT
ABOVE ACTION COULD AND SHOULD BE TAKEN DESPITE ABSENCE
OF INFORMATION (WHICH WE REQUESTED FROM FOREIGN OFFICE
TWO WEEKS AGO) CONCERNING PRECISE NATURE OF BRUECKMANN
APPEAL TO CONSTITUTIONAL COURT AND POSSIBLE LEGAL AND
CONSTITUTIONAL CONSEQUENCES OF COURT ACTION. FOREIGN
OFFICE TODAY URGED EARLY ALLIED ACTION ON INFORMAL COURT
REQUEST MADE IN BERLIN PARTICULARLY IN VIEW OF ARTICLE
IN DIE WELT OF MARCH 5 ON THIS CASE BY REASON OF WHICH
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EMBASSY REITERATED ALLIED INTEREST IN INFORMATION

CONCERNING CONSTITUTIONAL COURT CASE.

2. ARTICLE IN DIE WELT, PURPORTING TO BE BASED ON INFORMATION FROM THE COURT AND BRUECKMANN'S ATTORNEY, STATES THAT COURT WILL EXAMINE WHETHER THE FRG LAW OF MAY 2, 1953 ON INNER-GERMAN LEGAL AND ADMINISTRATIVE ASSISTANCE IN PENAL MATTERS ON WHICH DECISION TO DELIVER BRUECKMANN TO GDR IS BASED, IS CONSISTENT WITH THE FRG CONSTITUTION AND COURT'S 1973 DECISION ON THE BASIC TREATY. BRUECKMANN'S ATTORNEY IS REPORTED AS STATING THAT HIS ACTION IS DIRECTED NOT DIRECTLY AGAINST THE BERLIN KAMMERGERICHT AFFIRMATION OF THE BERLIN RENDITION ORDER BUT TO THE POSITION THAT THE FRG WOULD TAKE BEFORE THE STRASBOURG HUMAN RIGHTS COMMISSION RE BRUECKMANN'S PENDING HUMAN RIGHTS COMPLAINT. WHILE LEGAL BASIS FOR ANY CONSTITUTIONAL COURT JURISDICTION TO EXAMINE CONSTITUTIONALITY OF 1953 FRG LAW BASED ON BRUECKMANN CASE IS UNCLEAR, POSSIBLE COURT DECISION THAT 1953 LAW IS UNCONSTITUTIONAL, WHILE IT WOULD NOT BE EFFECTIVE TO INVALIDATE 1953 LAW IN BERLIN, COULD AFFECT FRG POSITION BEFORE STRASBOURG COURT TO WHICH HUMAN RIGHTS COMMISSION MIGHT REFER BRUECKMANN COMPLAINT, IN TURN RAISING POSSIBILITY OF STRASBOURG COURT DECISION THAT BRUECKMANN'S RENDITION TO GDR WOULD CONTRAVENE FRG OBLIGATIONS CONCERNING HUMAN RIGHTS. SUCH A DECISION IF IT DOES NOT TAKE INTO CONSIDERATION CONTINUING EFFECT IN WSB OF 1953 LAW DESPITE INVALIDATING FRG CONSTITUTIONAL COURT DECISION, WOULD FACE ALLIES WITH QUESTION OF DESIRABILITY OF RELIANCE ON RESERVED RIGHTS IN BERLIN TO DEPRIVE STRASBOURG COURT DECISION OF EFFECT IN WSB.

3. AS BRUECKMANN APPEAL NOW MADE PUBLIC BY WELT ARTICLE AND PRESS INQUIRIES MOST LIKELY IN BERLIN ALLIED REPS AGREED THAT EMBASSIES WOULD REFER INQUIRIES TO BERLIN MISSIONS. ALLIED REPS ALSO AGREED THAT SUBSTANCE OF PRESS LINE DEVELOPED IN BERLIN SHOULD BE DESIGNED TO ANTICIPATE LIKELY SOVIET QUESTION OR PROTEST CONCERNING THIS CASE.

4. EMBASSY WAS JUST INFORMED BY FONOFF REP THAT (1) FORMAL REQUEST MADE BY BRUECKMANN ATTORNEY TO KARLSRUHE
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COURT IS RPT IS DIRECTED AGAINST KAMMERGERICHT DECISION;
(2) CONSTITUTIONAL COURT IS NOW AWARE THAT THE THREE POWERS ARE INVOLVED IN THE CASE; AND (#) FEDERAL GOVERNMENT WILL REPLY TO ANY PRESS INQUIRIES BY STATING THAT FEDERAL GOVERNMENT WAS NOT SERVED WITH COPY OF BRUECKMANN APPEAL, AND THAT IN A BERLIN CASE CERTAIN RESERVATIONS OF THE THREE POWERS WHICH ARE, OF COURSE, KNOWN TO THE FEDERAL CONSTITUTIONAL COURT, MUST BE TAKEN INTO

CONSIDERATION.
HILLENBRAND

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